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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/827,010

04/19/2004

Kent Christian Johnson

APMED-001A

2521

7663

7590

09/28/2007

STETINA BRUNDA GARRED & BRUCKER

75 ENTERPRISE, SUITE 250

ALISO VIEJO, CA 92656

EXAMINER

ANGEBRANNDT, MARTIN J

ART UNIT

PAPER NUMBER

1756

MAIL DATE

DELIVERY MODE

09/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/827,010

Applicant(s)

JOHNSON ET AL.

Examiner

Martin J. Angebrannt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/6/2007 & 7/26/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/26/07.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

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1. The response of the applicant has been read and given careful consideration. Responses to the arguments are presented after the first rejection to which they are directed.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 12,13,18,19 and 22-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is no basis in the specification as filed for the "unattached" language.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1,2,6-12,14-18,20-22,24,25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien '839, in view of Nakano et al. '563.

O'Brien '839 teaches with respect to figure 1 a substrate comprising a flexible substrate (33) of polycarbonate or resin, with digital data embossed (37) therein, a reflective layer of 30 nm of aluminum or the like (31), a print layer (29) formed on the backside of the print layer (substrate, 21) and a lenticular array (23). The lenticular elements may be applied or

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etched/embossed into the film (3/60-4/16 and 5/25-38). The print layer and the reflective layer may be bonded to each other using known methods (3/52-60). Plural images are formed in area (29) (4/6-16). There is a reference to Gottfried et al. '987 (3/18-22).

Nakano et al. '563 teaches with respect to figure 3, optical recording media having substrates (1) which are embossed with data and overcoated with a reflection film, a UV curable adhesive layer (5) is applied and a second substrate (4) which is printed on both sides (6,7) to provide a stereoscopic/depth viewing effect. The second substrate may be polycarbonate (8/44-54).

The examiner holds that the print layer (21) is a substrate within the meaning of the claims. It would have been obvious to one skilled in the art to modify the invention of O'Brien '839 by using a bonding layer to attach the print layer with a reasonable expectation as this is known in the art for adhering substrates bearing three dimensional images as evidenced by Nakano et al. '563. The claims embrace the lenticular elements being applied as well as embossed in the print layer and to address the case where they are embossed in the layer, the examiner holds that it would have been obvious to modify the media resulting from the combination of O'Brien '839 and Nakano et al. '563 discussed above by embossing or etching the lenticular element directly in the polycarbonate layer.

The limitation of claim 21 is held to include a jewel case (commonly supplied with optical discs), which is entirely transparent and the aperture is the entire side of that jewel case and the use of these cases with the disc media claimed is considered obvious to one skilled in the art on the basis of the prevalence of the jewel cases with most CDs sold and most burnable DVDs on the market at the time the invention was made.

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With respect to the limitation relating to customer oriented images and anticounterfeiting images, the examiner holds that these are met by plural images until the claims distinguish between the content of the two as the plural interlaced images will serve both inform the consumer of the contents and due to the stereoscopic nature of the image provide an assurance of being a genuine article to the consumer based upon the difficulty in forming a counterfeit article.

With respect to the arguments of the applicant with regard to the combination of Nakano et al. '563 and O'Brien '839, one skilled in the art would look at the direction to "known bonding methods" in O'Brien '839 and to practice the invention would have to make a choice to practice the teaching based upon what is known and the position of the examiner is that Nakano et al. '563 is within the same art and the adhesive is in contact with printed information on the interior surface of a substrate and so there is a reasonable expectation that the disclosed adhesive would work in a similar placement in O'Brien '839 (ie a reasonable expectation of success). Further, with respect to the embodiments where the substrates are pre-cut prior to adhesion, the examiner points to Nakano '563 who describes a the first substrate being a transparent resins disc (8/39) which is then coated with a reflective film and a second transparent substrate and these are bonded together to form an "optical disc", without mention of cutting the discs after adhesion. The rejection stands.

6. Claims 1,2,6-12,14-18,20-22,24,25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien '839, in view of Nakano et al. '563, further in view of Miyamoto et al. '250.

Miyamoto et al. '250 teaches with respect to figures 2A-2D, two disc substrates each provided with a reflective layer, where one is coated with and adhesive and these are then

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contacted and rotated together to spread the adhesive. This is described as conventional (1/54-2/27). The inventive process is similar (12/14-13/35). The use of a hot melt adhesive (18/54-57) is taught as well as UV curable adhesives (18/32-37).

In addition to the basis above, the examiner cites Miyamoto et al. '250 who clearly shows two disc substrates adhered together and holds that it would have been obvious to one skilled in the art to modify the processes resulting from the combination of O'Brien '839 and Nakano et al. '563, by precutting the substrates and then adhering them together as disclosed by Miyamoto et al. '250 with a reasonable expectation of forming a useful optical recording medium.

7. Claims 1-12,14-18,20-22,24,25, and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien '839, in view of Nakano et al. '563, further in view of Gottfried et al. '987.

Gottfried et al. '987 teaches forming interlaced images directly onto lenticular lenses. The lenses may be formed of PETG, polystyrene, polyethylene, polyacrylates, polymethacrylates, PET, polypropylene, polybutylene,, polycarbonate, PVC, plastic, etc (12/39-44). The printing of the images on the backside of the lenticular lenses using a printing press, ink jet, photographic processes or laser printers (12/45-61). Goggins et al. '451 is discussed (2/49)

In addition to the basis provided above and to address those embodiments not rendered obvious above, it would have obvious to one skilled in the art to modify the media and proceresses for forming them rendered obvious by the combination of O'Brien '839 and Nakano et al. '563by using the printing techniques and lenticular lens materials disclosed by Gottfried et al. '987 based upon the direction to Gottfried et al. '987 within O'Brien '839.

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The rejection stands for the reasons above as no further arguments were directed at this rejection.

8. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien '839, combined with Nakano et al. '563 and Gottfried et al. '987, further in view of Miyamoto et al. '250, Goggins et al. '451 and Jacobsen '344.

Goggins et al. '451 disclose the use of lithographic printing to form images to be viewed through lenticular lenses. (throughout, see 6/57-7/33).

Jacobsen '344 teaches the use of various printing techniques on lenticular elements, including web offset, flexographic, rotogravure (2/ 58+)

To address the embodiments not discussed above, the examiner holds that it would have been obvious to modify the optical recording media and processes for forming them rendered obvious by the combination of O'Brien '839 with Nakano et al. '563 and Gottfried et al. '987 by using other bonding means such as hot bonding taught by Miyamoto et al. '250 for use with CDs and DVDs and/or printing methods known in the art to form interlaced images using known printing techniques, such as lithography, web printing, gravure and flexographic printing based upon these being known in the art for forming interlaced images as evidenced by Goggins et al. '451 and Jacobsen '344.

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re*

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Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-30 of copending Application No.

10/927209 (US 2005/0233141). Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application are open to the presence of a dyes based recording layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The issue is one of dual ownership, rather than purely time wise extension of the coverage. The applicant's comment fails to address this and so cannot obviate the rejection.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

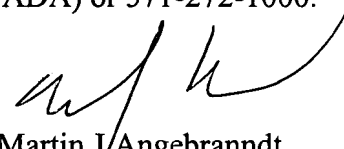
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Martin J. Angebranndt whose telephone number is 571-272-1378. The examiner can normally be reached on Monday-Thursday and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Huff can be reached on 571-272-1385. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Martin J. Angebranndt
Primary Examiner
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09/25/2007